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June 18, 2013

Office of the Mayor
City of North Ridgeville, Ohio
North Ridgeville Administration Office
7307 Avon Belden Road
North Ridgeville, Ohio 44039,

Chief Mike Freeman
North Ridgeville Police Department
7307 Avon Belden Road
North Ridgeville, Ohio 44039,

VIA FACSIMILE TO: 440-353-0834
ALSO VIA U.S.P.S. PRIORITY MAIL® SERVICE

and,

Law Department
City of North Ridgeville, Ohio
7307 Avon Belden Road
North Ridgeville, Ohio 44039

VIA FACSIMILE TO: 440-353-1541
ALSO VIA U.S.P.S. PRIORITY MAIL® SERVICE

RE: Illegal Conduct of North Ridgeville Humane Officer Barry Accorti

Your Honor, Chief Freeman and Counsel:

Our office represents the Ohio Society for the Prevention of Cruelty To Animals (OSPCA).

As your offices all must now be well-aware, Officer Accorti recently responded to a resident's call about five stray kittens, and ended up killing the kittens with a rifle, not only in front of the resident's children, but on grounds appurtenant to occupied residential dwellings.

The facts of this incident have been widely reported and there are public statements attributed to the Chief of Police not only admitting the facts of the incident but condoning and defending the Officer's conduct. Therefore, we will not go into great detail about the witness statements and other evidence now in our possession and being provided to the OSPCA. Suffice it to say that given the public outcry, it is hard to believe that any of your offices would want OSPCA to have to publicly lay out all of that evidence in a public courtroom in the context of formal litigation.

This is to request that each of your offices act immediately to appropriately address grossly illegal, dangerous and inhumane actions of Humane Officer Barry Accorti, as set forth below.

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Letter to the Office of the Mayor of the City of North Ridgeville, Ohio
Chief Freeman, North Ridgeville Police Department, and
City of North Ridgeville, Ohio, Law Department

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The actions of Officer Accorti violated several criminal statutes. While OSPCA cannot independently enforce the criminal laws of Ohio, the Ohio Court of Appeals has recently held in a published decision that OSPCA has standing to sue to stop illegal killings of companion animals by agents of a county government. *State ex rel. Ohio S.P.C.A., Inc., v. Bd. of Commrs. Of Hocking County, et al.*, Court of Appeals of Ohio, Fourth Appellate Judicial District for Hocking County, case no.: 13CA2, decided April 23, 2013, at pages 6 and 7.

This letter is to inform your offices that unless Officer Accorti is immediately removed from his position and subjected to disciplinary actions and charges filed in criminal court, OSPCA is ready, willing and able to seek Mandamus and other appropriate formal legal relief.

We wish to address certain public statements attributed to the Chief of Police concerning this incident, because it is a disservice to North Ridgeville and all of its residents if a respected public official misstates or does not know the laws of the State of Ohio.

Shooting a cat in the State of Ohio is never legal!!

In the Ohio Revised Code, cats are “companion animals.” Section 959.131(A)(1), entitled “Prohibitions concerning companion animals,” states,

“(A) As used in this section:

(1) "Companion animal" means any animal that is kept inside a residential dwelling and ***any dog or cat regardless of where it is kept.***¹ (*Emphasis added.*)

Section 959.131(B) states, “***No person shall knowingly*** torture, torment, needlessly mutilate or maim, cruelly beat, poison, ***needlessly kill, or commit an act of cruelty against a companion animal.***” (*Emphasis added.*)

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¹ Section 959.131(A)(1) continues, ““Companion animal" does not include livestock or any wild animal.” and Section 959.131(A)(5) states that, ““Wild animal" has the same meaning as in section 1531.01 of the Revised Code.” In Section 1531.01(X), the Code states, ““Wild animals" includes mollusks, crustaceans, aquatic insects, fish, reptiles, amphibians, wild birds, wild quadrupeds, and all other wild mammals, but does not include domestic deer.”

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The express intent of the Legislature is quite clear from the excerpted sections. However, some may allege that despite this crystal-clear language, somehow the cats that Officer Accorti killed are not “companion animals,” perhaps because they think that they are somehow “wild mammals.”

However, the Legislature has also stated in section 959.02 of the Ohio Revised Code, entitled “Injuring animals,”

“No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat, or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity.” (Emphasis added.)

Additionally, Ohio Revised Code section 959.13, entitled, “Cruelty to animals,” also states,

“(A) No person shall:

“(1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal * * *” (Emphasis added.)

The Ohio Revised Code expressly states at section 959.06, that,

“(A) No person shall destroy any domestic animal by the use of a high altitude decompression chamber or by any method other than a method that immediately and painlessly renders the domestic animal initially unconscious and subsequently dead.” (Emphasis added.)

Further, without even considering the gruesome and inhumane conduct of this Officer toward the cats, his conduct was squarely outside the law!

Section 2923.162 of the Ohio Revised Code, entitled, “Discharge of firearm on or near prohibited premises,” states that:

“(A) No person shall do any of the following:

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“* * *

“(2) Subject to division (B)(2)² of this section, ***discharge a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another***, or a charitable institution;” (*Emphasis added.*)

Can it truly be argued that Officer Accorti did not knowingly needlessly kill companion animals? Or that he did not willfully kill these animals that were not his property? Or that he did not repeatedly discharge a firearm on the ground appurtenant to an inhabited dwelling that was not his property? Or that a gunshot is “painless”?

Of course not.

Officer Accorti did needlessly kill these cats, by a method that was not painless, and he also discharged a firearm on the ground appurtenant to an inhabited dwelling. The only real question is the appropriate response to his undisputedly criminal and inhumane behavior.

Therefore, OSPCA demands, pursuant to Ohio law, that:

1. The North Ridgeville Police Department cease and desist with shooting of cats or discharge of any firearm on private property, except in a situation where it is absolutely necessary for the protection of life;
2. The North Ridgeville Police Department suspend Officer Accorti immediately, without pay or benefits, pending any required hearing on his termination;
3. The city of North Ridgeville and its Police Department adopt any necessary policies or procedures to prohibit the use of all firearms against animals and to insure that animals are handled in compliance with the above-referenced provisions of the Ohio Revised Code;
4. Criminal charges be initiated against Officer Accorti for violation of Ohio Revised Code sections 959.13, 959.131, and 2923.162; and,

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² Subsection (B)(2) pertains to the discharge of a firearm on one’s own property, which is clearly not the case here.

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5. Provide OSPCA with written confirmation or documentation of the completion of the four (4) steps set forth above, to our office as counsel for OSPCA, not later than the close of business on Friday June 28, 2013.

As stated above, OSPCA is well-aware that it cannot initiate a criminal prosecution of Officer Accorti. However, as also noted above, OSPCA does have the right to sue to stop illegal killing of animals by the City of North Ridgeville and its employees.

If your offices fail to take all of the above steps immediately, OSPCA may initiate legal action to enforce the above-referenced provisions. We should note that in the event that litigation becomes necessary, it would also include claims related to Officer Accorti's other incidents of improper discharge of his weapon (toward deer in a residential area) and mistreatment of an injured dog by another Officer.

Our client would prefer to resolve this situation through education and support for appropriately qualified and trained law-enforcement personnel. However, unfortunately, the actions of Officer Accorti are so public and so egregious that we must insist on compliance with the five (5) specific demands above before we can engage in a more cooperative and educative effort to address the needs of the City of North Ridgeville and its residents.

On behalf of our client, we thank you in advance for your attention to this matter.

Very Truly Yours,

JOHN A. BELL, ESQ.,
Attorney-at-Law

JAB/hpc